in 1957 but upon the letter of March 3, 1980. The contract was clearly still in existence at the date of that letter.

That the Purchaser and the Plaintiff have delayed long in bringing an action to obtain specific performance of the contract cannot be gainsaid, even though the learned Chief Justice did not refer to the defence of laches, which was pleaded. The topic was but briefly mentioned in argument in the court below and has not been mentioned at all before us. Specific performance is an equitable remedy and it will not be ordered where, by reason of undue delay, it is unjust to do so. In the present case I do not see that any injustice would result to the Vendor if an order were made.

I would allow the appeal and direct the Respondent to execute the appropriate form of transfer within one month. If he fails to do so, the form should be executed by the Chief Registrar. Costs here and below should follow the event.

Appeal allowed.

Solicitors: *Ibrahim & Chee, Yu & Co.*

KOH HOE PENG v. CENTRAL DEVELOPMENT LTD.

[C.A. (Briggs P., Yang J.A., Garcia J.) November 25, 1982]

[Bandar Seri Begawan – Civil Appeal No. 2 of 1982]

Land Law – Transfer of property to a non-natural born subject must be with approval of Sultan in Council – Land Code, s. 23.

On January 21, 1977, the Central Development Ltd. agreed to buy from one Koh three houses in Brunei. By the same agreement Koh also agreed to "transfer the said property to the Purchaser or its nominee". In November 1977, Central Development Ltd. having difficulty in selling the houses decided to transfer the three houses to a director of their company, one Lim. Lim was to hold the houses in trust for the company until purchasers could be found. Lim was a natural born subject of His Highness the Sultan of Brunei.

The issue before the court is whether, under the Torrens system of land registration as applicable in Brunei, it is lawful to transfer land to a natural born subject of His Highness when that subject is not intended to hold beneficially but is to be trustee for a person who is not a natural born subject of His Highness.

Held, dismissing the appeal and allowing the cross-appeal: since the discretion rests solely with the Sultan in Council, the agreement of January 21, 1977 and arrangements made by the parties in November 1977 could not be said to have the effect of defeating section 23 of the Land Code. The parties have no way of transfering any property without the aid of the Land Officer.

Cases referred to:

(1) *Chong Kon Fah* v. *Yong Siau* [1983] 1 M.L.J. 271.
(2) *Haji Abdul Rahman* v. *Mahomed Hassan* [1917] A.C. 209; 1 F.M.S.L.R. 290.
(3) *Hassan* v. *Ismail* [1970] 1 M.L.J. 210.
(4) *Abigail* v. *Lapin* [1934] A.C. 491, 500.
(5) *Wolfson* v. *Registrar General of New South Wales* (1934) 51 C.L.R. 300, 308.
(6) *Durani bin Haji Tahu* v. *Dato Kerna Hj. Jaya & Ors.* Civil Suit No. 25 of 1970 (unreported).
(7) *The Guardians of the Poor of the West Derby Union* v. *Metropolitan Life Assurance Society* [1897] A.C. 647.
(8) *Salomon* v. *A. Salomon & Co. Ltd.* [1897] A.C. 22.
(9) *R.* v. *Bhagwan* [1972] A.C. 60.
(10) *R.* v. *Newland* [1954] 1 Q.B. 158.

HIGH COURT.

Allen Yau (*Miss D.F. Abang Zen* with him) for the plaintiffs.

L.A.J. Smith (*Kugarajah* with him) for the defendant.

Cur. Adv. Vult.

Huggins J.: By an agreement in writing dated January 21, 1977 the defendant agreed to sell to the plaintiff three houses at a price of $85,000.00 each. The defendant now refuses to take the necessary steps to convey the land and the plaintiff sues for an order for specific performance.

The contention of the defendant is that the agreement was illegal and void and he relies on section 23 of the Land Code, the material parts of which are:

"Any person wishing to transfer, charge, lease or sub-lease his land shall deliver to the Land Officer an instrument in one of the Forms D, E or F of the Schedule or such other forms as the Sultan in Council may from time to time by rule prescribe together with the extract under which he claims, and the Land Officer, if satisfied as to the transaction, shall register such transfer, charge, lease or sub-lease.

. . . . .

Provided that a transfer, charge, lease or sub-lease of land to a person who is not a natural born subject of His Highness shall be subject to, and shall not be valid or registered without, the approval of the Sultan in Council."

Reference was also made to an amendment

made to this section by the Emergency (Land Code) (Amendment) Order 1979 and to the Emergency (Land Code) (Amendment) Repeal Order 1979. However, I am satisfied that the former order does not affect this case.

Under the agreement the defendant agreed to transfer the houses to the Purchaser, "which expression shall include its assign and nominee". The plaintiff Purchaser nominated a Mr. Lim Eng Ming, who is conceded on all sides to be a natural born subject of His Highness. However, it is also common ground that the intention now is that Mr. Lim Eng Ming shall hold the three houses in trust for the plaintiff corporation, although there is a dispute as to the date when that intention was formed. Mr. Smith submits on behalf of the defendant that a transfer in favour of a person, even though a natural born subject of His Highness, would be invalid if, instead of taking the beneficial interest to himself, he held it as trustee for someone who was not such a subject – as, of course, the plaintiff is not.

The case for the defendant appeared to develop as the trial proceeded. Mr. Yau for the plaintiff submitted that it mattered not when the intention that Mr. Lim Eng Ming would hold as a trustee was formed. At the outset Mr. Smith seemed to be suggesting not only that it was relevant but that it was vital, and much time was spent on evidence as to when the intention was formed. At the end of his closing address, however, he submitted that, even if that was not the intention in the first instance, it was certainly the intention at the time notice to transfer to Mr. Lim Eng Ming was given and that such an intention even at that time made the agreement unlawful.

Although in view of the conclusion I have reached it is not material when the intention was formed, I ought first to decide this issue of fact. A director of the plaintiff company, Huang Choo Jen, testified that the purchase of the three houses was forced upon the plaintiff by the defendant in the following circumstances. The defendant was the owner of a piece of land which he planned to develop. (I shall, therefore hereinafter refer to him as "the Developer"). The plaintiff is a building contractor, one of several who were invited to tender for the construction of nine houses on the land. (I shall refer to the plaintiff as "the Builder"). The Builder's tender was not the lowest, but the Developer, who at all times was represented by his brother ("the Brother") under a Power of Attorney, offered to give a contract to the Builder if it would agree to buy three of the houses at a price of $85,000.00 each, which was above the current market price at the time. The Builder agreed, but with the intention of selling them at a profit: accordingly the parties executed the agreement of which specific performance is now sought. On the previous day the parties had executed the building contract. That is not really relevant to the present case and I mention it only because a great deal of evidence was adduced in cross-examination of Mr. Huang which was concerned with that contract and which could not be material (save as to the credibility of the witness). Disputes arose under the building contract and eventually the Builder gave notice to terminate that contract. By a letter dated November 14, 1977 the Builder gave notice to the Developer to transfer the three houses it had agreed to purchase to its nominee, Mr. Lim Eng Ming.

The Brother asserted that the Builder's tender was the lowest and that no pressure was put upon it to buy any houses: the price of $85,000.00 was the market price: Mr. Lim Eng Ming told him at the outset that the Builder intended to cheat the Government by transferring the houses to a natural born subject of His Highness, who would, however, hold them in trust for the Builder itself.

The evidence on both sides presented difficulty. Thus Mr. Huang never satisfactorily explained how, if he was the author of the plan to transfer the houses to Mr. Lim Eng Ming and if he thought it up as about the beginning of November 1977, the Developer could have learned of it so as to refer to it in his letter of November 14. As, however, Mr. Lim is a neighbour to the Brother and related to him by marriage, it is not impossible, as Mr. Huang said, that Mr. Lim Eng Ming himself told him. Apart from this Mr. Huang was by far the better witness and the attempts to discredit him in relation to his evidence about the building works failed, although I did not entirely understand all his answers concerning the drains. This is, perhaps, not altogether surprising. For some reason which has not been explained the parties had chosen to behave in a most extraordinary way in relation to the building works. They entered into an agreement and an architect was duly appointed to see it through. Without informing the architect the parties then entered into a new building contract (that of January 20, 1977, to which I have been referring) and it was

not until November 1977 that the architect discovered that he had all along been administering the wrong contract. Anything more likely to cause confusion it is hard to imagine. The Brother, on the other hand, was throughout a most unsatisfactory witness, who rarely gave a straight answer to a question. His story that Mr. Lim Eng Ming told him that the Builder's intention was "to cheat the Government" was not supported by calling Mr. Lim, whose sympathy may be supposed not to be against the Brother. Moreover, this story begs the very question which I have to decide in this case, because an intention to cheat the Government would be irrelevant if the conduct in contemplation would not in law constitute cheating, and it has been the Builder's contention that it would not. Despite the Brother's assertion that he was told in the beginning that the three houses would be held in trust for the company, he admits it was not until he received the letter of November 14, 1977 that he took the trouble to enquire of the Land Officer whether he saw any objection to such a transfer. It may well be that the Brother told Mr. Huang that he did not think he could sell the property to the company. That was because it was commonly believed that no approval would be given for a transfer to a corporation and is why the words "shall include its assign or nominee" were inserted. If it was the intention that Mr. Lim should be set up as a front to deceive the Land Officer when the time for performance arrived, it is more likely that his name would have been inserted in the agreement and that any reference to nominees would have been carefully omitted. I find that it was always the intention of the Builder to sell the three houses and that, although both parties clearly anticipated that the Developer might be asked to transfer the three houses to nominees as a convenient conveyancing procedure, it was not until November 1977, the Builder having experienced difficulty in selling the houses individually, that the plan was conceived of having all three transferred to Mr. Lim Eng Ming to hold them in trust until such time as purchasers could be found. By that time relations between the parties had become so strained by reason of disputes over the building agreement that the Builder no doubt wished to ensure that the Developer would be compelled to perform his obligations under the sale agreement.

It follows that, whatever may be the correct view on the question of law which has been argued, the sale agreement was not illegal and void from the outset: *Chong Kon Fah* v. *Yong Siaw*[1] and see *Haji Abdul Rahman* v. *Mohamed Hassan*[2] and *Hassan* v. *Ismail*[3] which were not cited to the Court of Appeal. It has not been suggested that an agreement between A (a corporation) and B (a natural born subject of His Highness) that B should transfer land beneficially to C (another natural born subject of His Highness) is illegal.

The real dispute is whether, under the Torrens system of land registration as applicable in Brunei, it is lawful to transfer land to a natural born subject of His Highness when that subject is not intended to hold beneficially but is to be trustee for a person who is not a natural born subject of His Highness. If it be not lawful then, as it seems to me, the court should not lend its aid to a party seeking to effect such an unlawful purpose whether the original agreement between the parties was void or not. If, therefore, it is the intention of the Builder to insist on the performance of this agreement in a manner which the law forbids, this suit must be dismissed.

Mr. Smith's contention is that, if it be lawful for a natural born subject of His Highness to take a transfer of a legal estate in land with the intention of holding it on trust for a party who is not a natural born subject of His Highness, the whole purpose of the proviso to section 23 of the Land Code can be defeated: foreigners will be able to acquire the beneficial interest in land by persuading some natural born subject of His Highness to act as trustee. That, he says, is contrary to public policy. He then cites several cases to support the proposition that an agreement to do an act that is illegal or immoral or contrary to public policy is unlawful and therefore void and for the further proposition that ignorance of the illegality, immorality or breach of public policy is no defence. Mr. Yau has not sought to dispute these propositions, which are well supported by authority: he submits that they have no application to the present case and that there is a fallacy in the defendant's argument in that it ignores the fundamental basis of the Torrens system and involves reading into this statute something which is not there.

We may start by recalling the description of the Torrens system given by the Judicial Committee of the Privy Council in *Abigail* v. *Lapin*[4]:

"The Real Property Act, 1900, of New South Wales, embodies what has been called, after the name of its originator, the Torrens system of the registration of title to land. It is a system which is in force throughout Australasia and in other parts as well. It is a system for the registration of title, not of deeds; the statutory form of transfer gives a

title in equity until registration, but when registered it has the effect of a deed and is effective to pass the legal title; upon the registration of a transfer, the estate or interest of the transferor as set forth in such instrument with all rights, powers and privileges thereto belonging or appertaining is to pass to the transferee. No notice of trusts may be entered in the register book, but it has long been held that equitable claims and interests in land are recognized under the Real Property Acts".

The position in regard to trusts had been considered earlier the same year by the High Court of Australia in *Wolfson* v. *Registrar General of New South Wales*(5):

"But the declared policy of the system is to keep trusts off the register, and it appears to us that the notification of such special and elaborate equities as those involved in the present case as encumbrances is within the very evil to which the Act was directed. The register was not to present a picture of legal ownership trammelled by all sorts of equitable rights in others, which those who dealt with the registered proprietor must take into account'.

Mr. Yau submits in the light of these pronouncements that the policy of our Land Code is confined to dealing with legal estates. Indeed, unlike comparable statutes in other jurisdictions which have adopted the Torrens system, the Code makes no provision for the entering of caveats where equitable interests are alleged to exist: see *Durani bin Hj. Tahu & Others* v. *Dato Kerna Hj. Jaya & Ors.*(6). I am told that in practice the Land Officer has permitted such caveats to be entered, but, even if that be so, it cannot alter the declared policy of the system. If the Code be concerned only with legal estates, then, says Mr. Yau, it cannot have been intended by means of a proviso so to change the system that the Land Officer is entitled to concern himself with equitable interests. The proviso to section 23 was not enacted until 1955. Before that the right to transfer was unrestricted and to interpret the proviso as authorising the Land Officer to refuse to register a transfer to a natural born subject to His Highness on the ground that the transferee was to hold as trustee for someone who was not a natural born subject of His Highness would, it is said, be to go far beyond the justifiable limits of judicial interpretation. In *The Guardians of the Poor of the West Derby Union* v. *Metropolitan Life Assurance Society*(7) Lord Watson said at p. 652:

" ... but I am perfectly clear that if the language of the enacting part of the statute does not contain the provisions which are said to occur in it, you cannot derive these provisions by implication from a proviso. When one regards the natural history and object of provisoes, and the manner in which they find their way into Acts of Parliament, I think your Lordships would be adopting a very dangerous and certainly unusual course if you were to import legislation from a proviso wholesale into the body of the statute, although I perfectly admit that there may be and are many cases in which the terms of an intelligible proviso may throw considerable light upon the ambiguous import of statutory words".

At page 655 Lord Herschell spoke to the same effect:

"I decline to read into any enactment words which are not to be found there, and which would alter its operative effect because of provisions to be found in any proviso. Of course a proviso may be used to guide you in the selection of one or other of two possible constructions of the words to be found in the enactment, and shew when there is doubt about its scope, when it may reasonably admit of doubt as to its having this scope or that, which is the proper view to take of it; but to find in it an enacting provision which enables something to be done which is not to be found in the enactment itself on any reasonable construction of it, simply because otherwise the proviso would be meaningless and senseless, would, as I have said, be in the highest degree dangerous".

In our case there is no suggestion that the proviso would be meaningless and senseless but merely that it would leave a loop-hole. My attention was drawn to the provisions of section 3, 14 and 15 of the Residential Property Act 1976 of the Republic of Singapore which, so far as is relevant, are in these terms:

"3.(1) Except as provided in this Act

.....

(b) no person shall create any trust for sale in respect of any residential property or any estate or interest therein in favour of any foreign person;

(2) Any –

.....

(b) trust for sale in respect of any residential property or any estate or interest therein created by any person in favour of any foreign person in contravention of paragraph (b) subsection (1) of this section, ... shall be null and void".

"14(1) No –

(a) citizen or approved purchaser shall purchase or acquire any estate or interest in any residential property as a nominee of any foreign person with the intention that such citizen or approved purchaser shall hold it in trust for such foreign person; and

(b) foreign person shall authorise or appoint as his nominee any citizen or approved purchaser to purchase or acquire any estate or interest in any residential property with the intention that such citizen or approved purchaser shall hold it in trust for such foreign person.

(2) Any trust created in whatever manner or form pursuant to subsection (1) of this section shall be null and void ..... "

"15(1) The Registrar, if he considers or is informed in writing by the Controller that any transfer lodged with him contravenes any of the provisions of this Act, shall not complete the registration of the transfer".

It is words such as these that the Developer would have me read into the proviso, but that I am not prepared to do. *Salomon* v. *A. Salomon & Co. Ltd.*[8] is very much in point. The appeal to the House of Lords was against the decision of the Court of Appeal that the formation of the company and the agreement between the appellant (who had been made a party to a counter-claim in a debenture suit) and the company, and the issue of debentures to the appellant pursuant to such agreement were a mere scheme to enable the appellant to carry on business in the name of the company with limited liability contrary to the true intent and meaning of the Companies Act 1862. Lord Halsbury, L.C. said at p. 31:

"I observe that the learned judge (Vaughan Williams J.) held that the business was Mr. Salomon's business, and no one else's, and that he chose to employ as agent a limited company; and he proceeded to argue that he was employing that limited company as agent, and that he was bound to indemnify that agent (the company). I confess it seems to me that that very learned judge becomes involved by this argument in a very singular contradiction. Either the limited company was a legal entity or it was not. If it was, the business belonged to it and not to Mr. Salomon. If it was not, there was no person and no thing to be an agent at all; and it is impossible to say at the same time that there is a company and there is not.

Lindley L.J., on the other hand, affirms that there were seven members of the company; but he says it is manifest that six of them were members simply in order to enable the seventh himself to carry on business with limited liability. The object of the whole arrangement is to do the very thing which the Legislature intended not to be done.

It is obvious to inquire where is that intention of the Legislature manifested in the statute. Even if we were at liberty to insert words to manifest that intention, I should have great difficulty in ascertaining what the exact intention thus imputed to the Legislature is, or was. In this particular case it is the members of one family that represent all the shares; but if the supposed intention is not limited to so narrow a proposition as this, that the seven shareholders must not be members of one family, to what extent may influence or authority or intentional purchase of a majority among the shareholders be carried so as to bring it within the supposed prohibition? It is, of course, easy to say that it was contrary to the intention of the Legislature – a proposition which, by reason of its generality, it is difficult to bring to the test; but when one seeks to put as an affirmative proposition what the thing is which the Legislature has prohibited, there is, as it appears to me, an insuperable difficulty in the way of those who seek to insert by construction such a prohibition into the statute".

Lord Watson observed at p. 38:

""Intention of the Legislature" is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication".

At p. 45 Lord Herschell said:

"It was said that in the present case the six shareholders other than the appellant were mere dummies, his nominees, and held their shares in trust for him. I will assume that this was so. In my opinion, it makes no difference. The statute forbids the entry in the register of any trust; and it certainly contains no enactment that each of the seven persons subscribing the memorandum must be beneficially entitled to the share or shares for which he subscribes. The persons who subscribe the memorandum, or who have agreed to become members of the company and whose names are on the register, are alone regarded as, and in fact are, the shareholders. They are subject to all the liability which attaches to the holding of the share. They can be compelled to make any payment which the ownership of a share involves. Whether they are beneficial owners or bare trustees is a matter with which neither the company nor creditors have anything to do: it concerns only them and their *cestuis que* trust if they have any".

I make no apology for citing at length from these speeches, because they explain why the Court of Appeal upheld the trial judge, but for different reasons, and how the House rejected a similar argument to that which has been addressed to me. What was it that the Legislature intended to prohibit in our case? It was the registration of a transfer of the legal estate in land to a person who was not a natural born subject of His Highness without the approval of the Sultan in Council. There has been no registration of such a transfer and no registration of such a transfer is contemplated. I do not think that *R.* v. *Bhagwan*[9], cited by Mr. Smith, assists his argument. There the respondent had been charged on the following indictment:

"Dharam Singh Bhagwan is charged with the following offence:–

Statement of offence.

Conspiracy to evade the control on immigration imposed under the Commonwealth Immigrants Act 1962.

Particulars of offence.

Dharam Singh Bhagwan between the 1st day of January and the 23rd day of October 1967 within the jurisdiction of the Central Criminal Court conspired with other persons to evade the control on the immigration of Commonwealth

citizens into the United Kingdom in order that he, being a Commonwealth citizen and subject to such control, might enter the United Kingdom without, upon landing, submitting himself for examination by an immigration officer and medical inspector and without holding an employment voucher".

The passage on which Mr. Smith relied at page 70 came not from the speeches of the House but from the argument of Counsel. He then relied upon a passage cited by Lord Diplock from the judgment of the court in *R.* v. *Newland*(10) and seized upon the words "conspiracy by dishonest devices to defeat the clear intention and purpose of an Act of Parliament." It was the use made of those very words that the learned and noble judge went on to criticise. I would refer to the following passage in Lord Diplock's speech which appears at p. 82A":

"Under our system of parliamentary government what Parliament enacts are not policies but means for giving effect to policies. Those means often involve imposing upon private citizens fresh obligations or restrictions on their liberties to which they are not previously subject at common law. The constitutional function of the courts in relation to enacted law is limited to interpreting and applying it. It is the duty of the judge to ascertain what are the means which Parliament has enacted by the Act. In construing the enacting words he may take account of what the Act discloses as the purpose that those means were intended to achieve and, in the case of ambiguity alone, he may interpret them in the sense in which they are more likely to promote than hinder its achievement. But it is no function of a judge to add to the means which Parliament has enacted in derogation of rights which citizens previously enjoyed at common law, because he thinks that the particular case in which he has to apply the Act demonstrates that those means are not adequate to achieve what he conceives to be the policy of the Act".

The *ratio decidendi* of *R.* v. *Bhagwan* certainly does not support the proposition that to do something which is not prohibited by a statute, but which may reduce the efficacy of a prohibition which is contained in the statute, is unlawful or contrary to public policy. I hold that the defence fails.

If the possible effects of that decision are as Mr. Smith fears they may be, the remedy lies with the Legislature. In the present case I am satisfied that the trust was suggested solely to facilitate the eventual sale of the beneficial interest in the houses either to natural born subjects of His Highness or to persons who are not such subjects with the approval of the Sultan in Council.

In view of what I have already said the argument that, where approval of an act is required, the approval must be given before the act is done becomes irrelevant, for what has to be approved under the proviso to section 23 of the Land Code is the transfer, which is effected by registration of the Memorandum of Transfer. It was held in *Chong Kon Fah* v. *Yong Siau* (*supra*) that there was nothing unlawful in the execution of a memorandum of transfer to a person who is not a natural born subject of His Highness, or in the submission of that memorandum for registration of the transfer prior to signification of the approval of the Sultan in Council: indeed, the usual conveyancing practice was to submit an executed memorandum of transfer at the time application was made, through the Land Officer, for the necessary approval.

It has been agreed between counsel that the plaintiff is entitled to $48,987.08 under the first prayer and $17,500.00 under the third prayer. There will be an order that the defendant execute a Memorandum of Transfer within one month and, if he fails, then the Memorandum shall be executed by the Chief Registrar.

(From the above Judgment, the defendant appealed to the Court of Appeal).

COURT OF APPEAL.

L.A.J. Smith for the appellant.
Allen Yau for the respondents.

Cur. Adv. Vult.

Yang J.A. (delivering the Judgment of the Court): This is the judgment of the Court.

As the issues which have been argued in this appeal are confined within a narrow compass, we do not propose to state the facts in extenso. For the purpose of the appeal, it is necessary to say only that by a written agreement dated January 21, 1977, the Central Development Ltd. (incorporated in Brunei and hereafter referred to as "Central") agreed to buy from Koh Hoe Peng three houses in Brunei. By the same agreement Koh also agreed to "transfer the said property to the Purchaser or its nominee".

In November 1977, Central having had difficulty in selling the houses separately, a plan was first conceived of having all three houses transferred to a director of Central called Lim Eng Ming as nominee of Central, and for Lim Eng Ming to hold the houses in trust for Central until purchasers could be found. It is common

ground that Lim Eng Ming is a natural born subject of His Highness the Sultan of Brunei.

By section 23 of the Land Code, it is provided *inter alia,* that:

"Any person wishing to transfer, charge, lease or sub-lease his land shall deliver to the Land Officer an instrument in one of the Forms D, E or F of the Schedule or such other forms as the Sultan in Council may from time to time by rule prescribe together with the extract under which he claims, and the Land Officer, if satisfied as to the transaction, shall register each transfer, charge, lease or sub-lease ..... Provided that a transfer, charge, lease or sub-lease of land to a person who is not a natural born subject of His Highness shall be subject to, and shall not be valid or registered without, the approval of the Sultan in Council".

We agree with the learned trial judge's findings of facts. On those findings, it is safe to assume that the 1977 agreement was at least initially intended by the partners to operate within the framework of section 23. The true issue of the case, as we see it, is: whether or not section 23 in particular the proviso thereof, prohibits an agreement which provides for the transfer of land to a person who is not a natural born subject of His Highness or to that person's nominee without his prior approval or without mention of the need for the approval of the Sultan in Council.

The learned trial judge saw the intention of the Legislature as one of the prohibition of the registration of a transfer of the legal estate to a person who was not a natural born subject of His Highness without the approval of the Sultan in Council. For my part and with great respect I am of the view that whether that be an intention of the Legislature, it seems clear from the wording of the section that that section also applies to a transfer of land, not merely to a registration of a transfer of land. Be that as it may, this point does not affect the outcome of this appeal, as will be seen later.

Of the authorities cited, we need rely on only one, namely *Chong Kon Fah* v. *Yong Siau*[1]. In that case Mr. Justice Huggins, sitting in the Court of Appeal, held that an agreement such as the present one is not illegal and void *ab initio* that the Sultan's prior approval is not necessary (vide in particular pp. 6-9 of the judgment). I agree.

The concept of transfer in general, and the meaning of the word "transfer" as used in section 23 in particular, does not call for our definitive opinion in the present appeal. Suffice it to say that I take note of the distinction between an agreement for sale and purchase of land and an attempt to transfer land (Vide *Haji Abdul Rahman* v. *Muhamed Hassan*[2]). If the agreement is not unlawful, then specific performance may be ordered by directing the vendor to execute the memorandum of transfer. Upon delivery of the memorandum to the Land Officer and upon an application being made, it is then up to the Sultan in Council whether or not to approve the transfer. Since the discretion rests solely with the Sultan in Council, the agreement of January 21, 1977 and agreements made by the parties in November 1977 could not be said to have the effect of defeating section 23 of the Land Code. The parties have no way of transfering any property without the aid of the Land Officer.

We are of the view that the judgment of Mr. Justice Huggins the trial judge is correct both in law and infact, and we would therefore dismiss the appeal.

I think the order that should be made upon dismissal of the appeal is that the appellant should execute a Memorandum of Transfer within one month from today's date and if he fails to do that then the Memorandum will be executed by the Chief Registrar of the Supreme Court of Brunei.

Having heard Counsel, the cross appeal is allowed to the extent that the respondents will get judgment in terms of paragraphs (4) and (5) of the Endorsement, paragraph 3 having been dealt with by the learned trial judge by consent.

We therefore order that these issues which come within paragraphs (4) and (5) of the Endorsement to be tried before the Chief Registrar.

On costs: Mr. Yau asks for costs of appeal and cross-appeal.

Order: Costs of appeal and cross-appeal for respondents.

Order accordingly.

Solicitors: *Kugarajah & Co.; D.F. Abang Zen.*